

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Closed Captioning of Video Programming

Telecommunications for the Deaf, Inc.
Petition for Rulemaking

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CG Docket No. 05-231

To: The Commission

COMMENTS OF NBC TELEMUNDO LICENSE CO.

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INTRODUCTION AND SUMMARY

Less than a decade ago, Congress challenged video programming distributors, including local stations and pay-TV systems, to maximize the amount of new programming delivered to viewers with closed captions. Pursuant to Congressional directives, the Commission crafted captioning requirements that tried to balance the obvious benefits of closed captioning with the burdens such captions imposed on local stations and other programming distributors, and that recognized the critical role that technology should play in the push to caption as much television programming as possible.

Stations and other program providers are now fast approaching the goals set by the Commission eight years ago. This year, many distributors are delivering more than 5000 hours of captioned programming to their viewers. And local stations, including the stations owned by NBC Telemundo License Co. ("NBC Telemundo"), have succeeded in meeting the Commission's captioning benchmarks despite the special challenges that captioning poses to many of the other public interest efforts of these stations, including the free (to consumers) delivery of hundreds or thousands of hours of local news per year.

But the last mile of this transition remains the most challenging. To date, many stations have been able to satisfy much or all of the Commission's requirements through reliance on the captioning of prerecorded or network programming. Next year, however, local English-language stations will have to

caption 100 percent of their new, nonexempt programming, which means that many English-language stations may have to caption nearly 2500 hours of programming per year more than currently required. That means the programming that, until now, has been not captioned because of technical or production challenges will need to be captioned or cancelled.

Stations are preparing to satisfy next year's 100-percent captioning requirement even though many of the concerns that caused the Commission to implement a gradual transition in 1997 have not been addressed. For example, stations that cannot use electronic newsroom technique will have to real-time caption local news, even though all parties agree that there remains a shortage of trained stenocaptioners who can caption television programming in real time, stenocaptioning services remain costly, especially for local programming with no repeat value, and outside stenocaptioning services cannot demonstrate the same accuracy and immediacy as captions on prerecorded programming. The last mile poses one further challenge: there are not only more hours of programming to be captioned per channel, but also more channels – including local digital multicast and pay-TV channels – which will require captioning.

In order to complete the captioning transition begun less than a decade ago, regulators and programmers should continue to be guided by the three principles that have made the transition, to this point, a success: first, the Commission has attempted to strike a reasonable balance between the competing Congressional concerns of viewer accessibility and the burdens on programmers of any captioning mandate; second, the Commission has not tried to micromanage how each station has captioned its programming; and third, the Commission has encouraged the use of technology to satisfy immediate captioning needs and to foster innovation of advanced captioning technologies.

The last principle is even of greater import going forward. Although many problems that troubled the Commission in 1997 continue to persist today, technology has advanced significantly beyond the electronic newsroom technique, and is or will soon be able to deliver quality real-time captions for all of a newscast's dialogue. The continued development and deployment of advanced captioning technology,

which can eliminate initial delays for breaking news, enable the development of additional local programming and reduce station costs, will benefit viewers, regulators and stations alike by maximizing the availability of useful and economically feasible captions for the local and live programming that is a critical way many stations serve all of their viewers. Accordingly, the Commission should consider with great caution any change in the established captioning regulations, with particular attention to the unintended and adverse consequences of any change, including any delay in new captioning technologies.

I. NBC Telemundo Has Demonstrated an Abiding Commitment to Deliver Quality Closed Captioning to Our Viewers

NBC Telemundo, along with its affiliate, NBC Universal, Inc., has long believed in the importance of captioning. Prior to the passage of any federal captioning mandate, the Commission recognized that "virtually all of the prime time programming distributed by [NBC and other major networks was] closed captioned."¹ The Commission also noted that NBC, as with other major networks, captioned "a significant amount of their other programming, including news, children's programming, daytime programming and sports."² For example, in the current calendar quarter alone, the NBC Network will deliver more than 1100 hours of captioned programming to its affiliates throughout the country.

At the station level, NBC Telemundo's internal policies consistently result in captions above and beyond federal requirements. For example, NBC Telemundo-owned WRC-TV, Washington, DC, has long captioned virtually all of its nearly 40 hours of local news per week, even though network-level captioning is sufficient to satisfy much of any federal mandate. Collectively, NBC Telemundo stations dedicate millions of dollars annually to captioning costs. In 2004 alone, NBC Telemundo spent \$2.3 million on captions for

¹ See *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, Report & Order, 13 FCC Rcd 3272 (¶ 8) (1997) ("Closed Captioning Order"), modified on reconsideration, 13 FCC Rcd 19,973 (1998) ("Captioning Reconsideration Order").

² *Id.*

non-network programming on its 14 English-language stations. As these numbers demonstrate, NBC Telemundo shares the goal of making captioning an important means for serving all of our viewers.

II. Local Stations Are Nearing the Goal Set by Congress and the Commission Less Than Ten Years Ago, Notwithstanding the Unique Challenges Posed by Captioning Requirements

Free, over the air, local TV stations deliver a broad array of unique and important public interest benefits to all consumers. As one example, WRC-TV (the "Station") serves the public interest in many ways beyond any government mandate:

- The Station consistently produces and airs roughly 40 hours of local news per week – or nearly 25 percent of its entire broadcast schedule. In addition to Emergency Alert System coverage, the Station often interrupts scheduled programming, including network programming, to cover breaking news or important weather events.³ The Station also reliably provides outstanding coverage of local and national elections.
- The Station produces and airs multiple hours of locally produced, non-news programming, including programs such as *It's Academic*, the *Redskins Report* and the *Joe Gibbs Show*.

³ Over the air television stations routinely offer an information lifeline in times of local emergency. Beyond any obligations imposed by the Emergency Alert System, the Commission does not specifically require stations to deliver emergency coverage, but stations voluntarily and routinely provide extensive coverage of local emergencies. See *In the Matter of Broadcast Localism*, Notice of Inquiry, MB Docket No. 04-233, at ¶ 27 (rel. July 1, 2004) ("A fundamental way in which broadcasters use the medium to serve their communities of license is to provide emergency information.") In comments in that proceeding, NBC Telemundo detailed countless instances in which its stations interrupted network or other programming to deliver emergency information to their viewers. See NBC Telemundo Reply Comments, MB Docket No. 04-233, at Appendix A (submitted January 3, 2005). Stations invest in such programming even though those that choose to offer such coverage must satisfy additional Commission requirements. See 47 C.F.R. § 79.2. The recent experiences of Hurricanes Katrina and Rita along the western Gulf Coast, where some persons still lack cable or other video programming services, have demonstrated that over-the-air local stations serve an invaluable role in helping to prepare the public for emergencies as well as furthering efforts to respond to such emergencies.

Stations also often take the lead in rebuilding from local disasters. In response to the recent hurricanes, NBC Telemundo, apart from the many efforts of the NBC and Telemundo Networks, raised millions of dollars through telethons and fundraisers for the victims of these hurricanes. The NBC Telemundo Stations also used their websites to enable persons to find missing loved ones, a service that resulted in hundreds of thousands of hits in the first week alone. Following the attacks of September 11, 2001, the Station presented a three-hour special entitled "Asking, Listening, Healing" that addresses fears and concerns, especially those of children. These efforts were not in response to any government mandate, but an element of the unique service daily provided by local stations to their communities.

- The Station airs thousands of public service announcements annually, including many during prime time programming.
- The Station offers a quality slate of educational children's programming, including locally produced children's programming.
- The Station routinely supports and advances dozens of community events and organizations, including sponsoring a local Health Expo, the Whitman-Walker Clinic, the Walk for Literacy, America's Walk for Diabetes, and the Season 4 Giving program. Following the recent hurricanes that devastated the U.S. Gulf Coast, the station conducted fundraising, including an on-air telethon, that alone raised hundreds of thousands of dollars for recovery efforts.
- The Station has gone above and beyond Commission requirements in accelerating the public's transition to digital television, including assisting in the development of an experimental high-definition digital facility and becoming an early provider of a quality digital multicast weather service, NBC Weather Plus.
- The Station's programming is free to viewers who access it over the air. Yet, the Station's top-quality entertainment programming ensures that it remains a leading choice for millions of television viewers, including pay-TV subscribers.

Over the past few decades, closed captioning has become another of the many public benefits delivered by local television broadcast stations. In 1996, Congress made captioning a federal requirement in order to increase the amount of video programming "fully accessible to persons with hearing disabilities" in a manner "consistent with realities of the video programming marketplace."⁴ Congress did not define the term "accessible," but a common understanding of the term is consistent with congressional purpose: "capable of being understood or appreciated."⁵ Congress also concluded that any captioning regulations must take into account many other factors, including cost and other practical issues,⁶ and did not direct

⁴ See *Closed Captioning Order*, 13 FCC Rcd 3272 (¶¶ 7, 11). See also *id.* at ¶ 7 (noting that "Congress was concerned 'that video programming through all delivery systems should be accessible'").

⁵ See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY at 49 (1984).

⁶ 47 U.S.C. § 613 (excepting from any captioning obligation that captioning which would be economically burdensome or an undue burden). See also H.R. Report 104-458 104th Cong., 2d Sess. ("Conference Report") (1996) at 182-83 (requiring that implementation not be an economic burden to program providers, distributors or owners and that "the Commission shall balance the need for closed captioned programming against the potential for hindering the production and distribution of programming").

that any captions should be subject to quality requirements.⁷ The Commission likewise concluded that no quality requirements would be necessary or appropriate, even as the Commission established a multi-year timetable for English- and, separately, Spanish-language program distributors to caption 100% of their nonexempt, new programming.⁸

During the past several years, NBC Telemundo has invested millions of dollars to satisfy federal captioning mandates. Much of this investment is a result of a broader commitment to the publicly beneficial programming that our stations have long offered our viewers. Although federal captioning mandates apply to multichannel video programming distributors as well as local television stations, captioning mandates have imposed unique burdens on free, over-the-air television stations in part because of the many other unique public interest benefits these local stations deliver.

First, local stations must rely on real-time captioning, as prepared by outside stenocaptioning services, to caption much of their programming. The average NBC Telemundo English-language station offers viewers roughly 30 hours of local news per week, which amounts to roughly one-fifth of each English-language station's weekly schedule. If such programming is to be captioned, the captioning has had to be done in real time by remote stenocaptioning services, such as VITAC, enCaption or Caption Colorado. Real-time captioning by offsite services presents several issues for programmers.

As a rule, real-time captioning is necessarily less accurate than captions on programming that has been produced days or weeks in advance. NBC Telemundo's own internal analysis demonstrates that

⁷ See *Closed Captioning Order*, 13 FCC Rcd 3272 (¶ 206) ("Section 713 does not require [the Commission] to adopt rules or standards for the accuracy or quality of closed captioning.")

⁸ See *id.* (¶ 222) ("We will not adopt standards for the quality and accuracy of closed captioning at this time. . . . There are vast amounts of programming that will need to be captioned and those responsible for captioning under our rules will need to undertake significant efforts to ensure that the programming they distribute is in compliance with our rules.") The advent of the 100% captioning requirement in 2006 will increase the programming needed to be captioned on many stations by up to 600 hours per quarter. By comparison, prior increases in the captioning mandates were limited to an additional 450 hours per quarter. See 47 C.F.R. § 79.1(b)(i)-(iv).

stations relying on the real-time captioning of news programming by leading outside captioning services can reasonably expect an accuracy rate of no better than 84 percent according to a straightforward word-error metric.⁹ Because of the real-time nature of the programming, the station cannot correct inaccurate captions, and accuracy rates may vary significantly depending on the particular stenocaptioner tasked with a particular program.

The need to use remote real-time captioning services can delay the availability of captions with respect to breaking news or unscheduled programming. NBC Telemundo's experience is that even quality stenocaptioning services can require up to 20 minutes to identify an available stenocaptioner and commence captioning. When events require a local station to go on-air in less than 20 minutes, the resultant programming is unlikely to be immediately captioned. The gap between the airing of breaking news and the commencement of captioning both exposes the station to potential FCC liability¹⁰ and reduces the value of the programming.

Offsite real-time captioning also imposes unique economic issues beyond the costs of such programming. For example, programming that must be real-time captioned is often time sensitive, which means that the costs of such captioning cannot be mitigated through later airings of the same program.¹¹

Second, because over-the-air television stations deliver programming to over-the-air consumers for free, local stations must pay for captioning from what continues to be largely a single stream of video

⁹ See *infra* note 39.

¹⁰ See *Channel 51 of San Diego, Inc., Licensee of KUSI-TV, San Diego, CA Apparent Liability for Forfeiture*, Notice of Apparent Liability, 20 FCC Rcd 3969 (¶ 11) (2005) (noting that Commission might impose forfeiture "for those apparent violations where a video programming distributor provides visual presentation of emergency information in less than 30 minutes after it has provided aural information.")

¹¹ The Commission has attempted to address this concern through an exception for local non-news programming without repeat value. See 47 C.F.R. 79.1(d)(8). However, this exemption, by its terms, does not protect stations from having to caption local news programming, which remains many stations' predominant source of local captioning costs.

programming revenue. Unlike other video programming services, local television broadcast programming remains free to all consumers who choose to access that programming over the air, even as these stations face exploding competition from subscription video programming services ranging from cable to DBS to the local video store to the internet.¹² Any governmental mandates or voluntary station efforts to benefit the public thus must be paid for from an increasingly fragmented pool of advertising revenues. Since 1997, when the Commission first adopted captioning requirements, stations have had to compete with more and more outlets for such revenues. For example, since 1996, the cable operators' share of local television advertising revenues have increased from approximately eight to more than thirteen percent by 2002, with a further increase to 16 percent projected by 2005.¹³ Recent filings in other Commission dockets also suggest that local stations are proving increasingly unable to sustain the increasing costs of local news programming efforts in a number of markets nationwide.¹⁴

¹² See *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, 18 FCC Rcd 13620 (¶¶ 167-68) (2003) (concluding that NAB study "supports the conclusion that news costs are rising"), *reversed and remanded sub nom., Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied and remand pending*. The NAB study demonstrated that the average news expense of affiliate stations has increased by as much as 104% between 1993 and 2001. NAB also submitted a study from Smith Geiger, LLC, which concluded that "the continuing profitability of a local television news operation is now highly uncertain." Also, even as most consumers are able and willing to pay for video programming services, a significant percentage of viewers continue to rely on the free, over the air services for all of their real-time video programming. See, e.g., Federal Communications Commission, Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers, MB Docket No. 04-210 (¶¶ 7-8) (rel. Feb. 28, 2005) (estimating that approximately 15% of television households rely solely on the over-the-air delivery of real-time television signals and that "millions more" rely in some part on over the air reception).

¹³ See John M. Higgins, "They Discovered A Business," *Broadcasting & Cable* (released June 17, 2002) (citing Veronis Suhler & Associates analysis).

¹⁴ See Special Factual Submission in Support of Multicast Carriage by the NBC Television Affiliates Association, CS Docket Nos. 98-120, 00-96 & 00-2, at 16 (Jan. 8, 2004); Special Factual Submission in Support of Multicast Carriage by the CBS Television Network Affiliates Association, CS Docket Nos. 98-120, 00-96 & 00-2, at 14 & n.33 (Jan. 13, 2004).

Third, because stations continue to produce programming of significant interest to solely local audiences, stations often cannot spread captioning costs across multiple markets. Unlike national network services, local programming primarily is produced to serve viewers in a single television market. The costs for captioning a station's local programming thus are unlikely to be able to be shared from revenues from several markets. However, a station must pay the costs of captioning such single-market programming even as that station must compete for viewers against national programmers, both free and pay.

Despite these special obstacles, stations, as a group, appear to have broadly complied with the Commission's captioning requirements. That itself is a tribute to the wisdom of the Commission's decision to phase in captioning requirements and to enable most stations to use available technologies to caption news and other local programming. However, as of January 2006, stations will have to caption all of their programming, and no longer will be able to delay captioning those programs that present particular challenges. Accordingly, the Commission should continue to account for the special impact of captioning mandates on local stations and local programming before considering any further requirements or additions to the existing captioning regime.¹⁵

¹⁵ See Notice of Proposed Rule Making, *Closed Captioning of Video Programming, et al.*, CG Docket No. 05-231 (¶¶ 5-6) (rel. July 21, 2005).

III. Many of the Concerns That Caused the Commission to Implement a Gradual Transition Persist and Will Complicate Any Effort to Caption 100 Percent Of All New, Nonexempt Programming, Especially For Local Stations

In 1997 and again in 1999, and pursuant to Congressional instructions, the Commission concluded that any captioning mandate must reflect marketplace realities and economic feasibility.¹⁶ The Commission was sensibly concerned that there were insufficient captioners available, that captioning was costly, that captioning obligations should not be subject to specific nontechnical requirements, and that any captioning mandate was impractical unless available captioning technology could be employed by most local stations, as well as many other programmers.¹⁷ All of these important concerns remain true today, as stations and other distributors attempt to complete the final step in the transition to full captioning.

First, the supply of trained stenocaptioners continues to be insufficient to meet even the current levels of demand. The Commission based its captioning timetable on the assumption that captioning services would develop to respond to increased television captioning needs.¹⁸ But the demand for trained stenocaptioners has far outstripped supply. In a recent white paper, advocacy groups for stenocaptioners agree that there are not sufficient captioners to meet current demand, and begged Congress to earmark specific emergency funding to support efforts to recruit and train more stenocaptioners:¹⁹

However, unless Congress acts now to provide funding, there are simply not going to be enough trained captioners to handle the existing workload, let alone meet the demands set

¹⁶ See, e.g., Conference Report at 182-83; *Closed Captioning Order*, 13 FCC Rcd 3272 (¶¶ 7, 11, 41-44). See also *Captioning Reconsideration Order*, 13 FCC Rcd at 19981 (¶ 15) ("In arriving at an eight-year phase in period for captioning 100% of new programming, the Commission weighed the needs of deaf and hard of hearing individuals with the ability of the programming industry to meet the demand for increased captioning.")

¹⁷ See, e.g., *Closed Captioning Order*, 13 FCC Rcd at 3292-93 (¶¶ 41-42).

¹⁸ See, e.g., *Reconsideration Order*, 13 FCC Rcd 19,973 (¶ 102).

¹⁹ "The Captioning Crisis: A Case for Swift and Decisive Action," National Court Reporters Association, at 1 (released August 22, 2005) (available at http://www.ncraonline.org/infonews/press/media_homepage.shtml) (the "NCRA White Paper").

by the law and achingly anticipated by the one-third of Americans who rely on captioning. In addition, according to the U.S. Department of Labor, opportunities in captioning and realtime reporting are expected to grow by at least 10-20 percent during the next decade. Despite these prospects, in the late 1990s and early 2000s, diminishing numbers of people entered the field, creating a shortage and greatly enhancing job opportunities. Yet, because of the high start-up costs of equipping classrooms and attracting students to the field, coupled with an infrastructure that has begun to crumble following years of policy neglect, there are not enough facilities or programs to adequately train captioners.

The U.S. Senate agreed that the captioning industry has proven unable to train sufficient personnel to meet even current levels of demand when it approved a bill that would support more captioning training facilities.²⁰ To date, that funding has not yet been approved by the House, and whether increased congressional funding is sufficient to increase the availability of stenocaptioners is not clear. However, even additional funding by the end of this year will not address the current lack of stenocaptioners in time for the new requirements to take effect in January 2006 – stenocaptioners require multiple years of training to achieve reasonable levels of accuracy.²¹

Second, with more channels to caption, and more hours that are required to be captioned per channel, the stenocaptioning shortage is likely to worsen. Beyond the “diminishing number of people” being trained as stenocaptioners, two separate trends will exacerbate the existing shortage of captioning services available to stations and other program providers. One trend is that the number of channels subject to captioning requirements is increasing. Recent Commission studies suggest that there are 388 nonbroadcast networks, as opposed to the 145 national networks present in 1996,²² and nearly 600

²⁰ Training for Realtime Writers Act of 2005, S. 268, 109th Cong., 1st Sess. (2005).

²¹ See NCRA White Paper at 12 (noting stenocaptioning training requires “two to four years of technical training”).

²² Compare *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, MB Docket No. 04-227, at 9-10 (“As of June 2004, there were 388 national nonbroadcast programming networks.”) with *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Third Annual Report, CS Docket No. 96-133 (released Jan. 2, 1997) (¶ 142) (noting that there were the 145 “national programming services in operation”).

television stations are offering new multicast services.²³ Although many of these services will be subject to express exemptions for unestablished programming services, such as the “new network” exemption,²⁴ these exemptions are largely temporary.

The other trend is the increasing number of hours per channel that must be captioned to comply with the Commission's captioning mandates. For English-language programming services, the mandated increase from 1350 hours per calendar quarter of captioned programming to a 100 percent captioning requirement may necessitate each station subject to the requirement to caption roughly 600 additional hours of programming per quarter, or nearly 7 hours of new, nonexempt programming per day. And the programming that has yet to be captioned is likely the programming hardest to caption, such as local programming or live programming that requires real-time captioning.

Third, captioning remains costly, and real-time captioning from outside services remains both costly and not as effective or accurate as other captioned programming. A key reason underlying the Commission's reluctance to impose full captioning immediately was the cost of captioning.²⁵ Closed captioning continues to present similar cost challenges for program distributors as when the Commission first adopted the captioning regime.

In 1997, the FCC estimated that the costs of real-time captioning could be as low as “\$120 . . . an hour.”²⁶ Today, eight years later, an NBC Telemundo station can obtain real-time captions beginning at \$88 per hour, which is only \$32 less expensive per hour. The cost for real-time captioning also can be

²³ See <http://www.multicasting.com/aboutmulticasting15.html> (viewed November 8, 2005) (“Today, there are nearly 600 television stations in the United States who are multicasting.”)

²⁴ See, e.g., 47 C.F.R. § 79.1(d)(9). The Commission has indicated that this exemption applies to any new programming service, “national or regional, broadcast or nonbroadcast,” for up to four years,

²⁵ See *Captioning Order*, 13 FCC Rcd 3272 (¶ 84); *Captioning Reconsideration Order* at ¶ 102 (“We expect the costs of captioning to decrease as captioning resources increase.”)

²⁶ See *Captioning Order*, 13 FCC Rcd 3272 (¶ 84 n. 256).

much higher, in the range of \$300 per hour, depending on accuracy, the nature of the programming, and other factors.²⁷ In 1997, the Commission estimated captioning annually could add “between \$43,000 and \$438,000 annually to an entity’s costs.”²⁸ In 2004, NBC Telemundo alone spent \$2.3 million annually to caption non-network programming on just its 14 NBC-affiliated stations. In 1997, commenters noted that the costs of real-time captioning “could add at least \$100,000 to a station’s annual budget.”²⁹ For NBC Telemundo’s NBC stations, this projection significantly underestimated the costs of captioning; in 2004 alone, station captioning costs for our average NBC station were in excess of \$160,000, even though certain of these stations are located outside the top-25 markets and did not have any stenocaptioning costs. Moreover, when the 100% captioning requirement commences next year, and the demand for captioning services increases vis-à-vis a stagnant or declining supply of captioners, all of these costs appear likely to increase.

Beyond cost, manual real-time captioning from outside services presents other challenges to local stations that should be of concern to the Commission. One, as noted, outside stenocaptioning services will be less accurate than prerecorded programming and less immediately available for breaking or unscheduled programming. Two, reliance on outside stenocaptioning services for real-time captioning diminishes the station’s ultimate control over what is transmitted by the station. Since real time captions, by their very nature, are unable to be reviewed by the station, the station must trust that the outside stenocaptioner is delivering quality and appropriate captions. Three, such issues, and the other noted cost issues unique to local programming, also may cause stations to reconsider the amount of local or live programming they offer.

²⁷ See, e.g., *Notice* at n.133 (noting that Fox reports costs of captioning ranging from \$105 to \$365 per hour).

²⁸ See *id.*

²⁹ See *Captioning Order*, 13 FCC Rcd 3272 (¶ 75).

Fourth, ENT and other technological means are essential to meeting current captioning obligations, and today's advancing captioning technology promises imminent further benefits, including many not available in 1997. Technology is rapidly developing to meet the need that manual stenocaptioning, in light of the current stagnation in the number of trained stenocaptioning personnel, cannot satisfy. In developing the Telecommunications Act of 1996, Congress recognized that technological advancements could prove critical to the goal of maximizing accessibility to video programming. The Act's Conference Report urged the Commission to develop strategies to "improve competition and innovation in the provision of closed captioning."³⁰ The Commission initially responded to this mandate by deeming the electronic newsroom technique to be sufficient for captioning much programming outside the top-25 markets.³¹ The Commission recognized that the costs of captioning news and other programming would risk overwhelming stations in markets below the top 25 DMAs or stations in the top-25 DMAs that were not affiliated with a top-four network. The Commission further agreed that technology may ultimately prove the best means for captioning all stations' programming.³²

The benefits of automated voice-recognition captioning technology for regulators, stations and consumers are many. One, it is far more complete than classic electronic newsroom techniques, which only read a set transcript. The fundamental goal of advanced automated captioning technology is to caption all dialogue, whether scripted or otherwise.³³

Two, advanced captioning technology better serves consumers because it is more immediately available, and, ultimately, more reliable than other forms of real-time captioning. A station can activate a

³⁰ See Conference Report at 181-83.

³¹ See *Closed Captioning Order*, 13 FCC Rcd 3272 (¶ 84); *Reconsideration Order* at ¶ 41.

³² See *id.* ("[W]e recognize that in the future there may be other techniques for captioning live programming that provide full access (e.g., voice recognition).")

³³ See, e.g., Comments of Enco Systems Inc., CG Docket No. 05-231 at 1-2 (filed August 17, 2005).

local automated captioning system immediately upon learning of the need for a breaking news cut-in and may be able to use such a system to backup any unexpected captioning failures in network or syndicated programming. Accordingly, consumers will not just have more immediate captions in emergency situations – itself a substantial public benefit – but also know that the local station has a backup system available in case of an emergency or failure affecting the program supplier.

Three, a technological solution better serves regulators by being more consistent. Regulators will face less challenge in reviewing every possible complaint on case-by-case basis, as stations will be able to demonstrate whether their station was captioning via acceptable technological means. Also, to the extent the technology may be initially deficient in some respects, technological deficiencies are far easier to resolve on a permanent basis than one-time issues with individual stenocaptioning personnel.

Four, a technological solution better serves stations for the same reasons it benefits consumers and regulators: it is always available, it is less subject to circumstances outside the station's control, it is more uniform, and it is less biased against live or local programming, thus limiting any impact on the station's editorial decisions and ability to do the extraordinarily valuable live and local programming that is the hallmark of local broadcast television.

IV. As the Underlying Realities That Informed the Commission's Careful Balancing in Establishing the Captioning Rules Persist, the Commission Should Continue to Apply the Principles, Including Promoting Advanced Captioning Technologies, That Have Enabled Captioning to Succeed

The Commission and stations are entering the final leg of a very successful transition to captioning all new, nonexempt English-language programming. However, the problems facing the programming industry -- including limited available captioning services and cost and accuracy issues with live captioning -- persist. These problems more than justified Commission restraint in phasing in captioning hourly requirements; they continue to justify preservation of the Commission's established captioning regime, including the absence of any nontechnical accuracy requirements, as programmers nationwide attempt to

add 2400 hours or more of new, nonexempt captioned programming in order to satisfy next year's captioning benchmark.³⁴

In particular, the Commission should not risk stifling further technological development by imposing stringent accuracy rates at the same time that stations and other program distributors are striving to complete the transition to full captioning. Technological solutions have made significant advancement over the past few years; however, progress in technology can be delayed or stopped by regulation that poses significant and unexpected challenges to implementation of that technology. New accuracy requirements will pose such issues, especially as NBC Telemundo's own analysis indicates that stations currently cannot expect leading real-time captioning services to deliver more than 84 percent accuracy,³⁵ and the 2006 advent of the 100 percent captioning requirement and the current state of the captioning industry may require the use of undertrained personnel that cannot maintain even existing levels of accuracy.

Similarly, accuracy benchmarks that involve subjective analysis cannot serve as a defensible Commission standard. Stations need to know whether a captioning service, whether automated or otherwise, is compliant with Commission regulations. A subjective standard, or one that requires captioning of certain types of silent action, correct grammar or capitalization, or inarticulate sounds, is too dependent on the perceptions and biases of the person reviewing the captioning to be suitable for either technological development or Commission action.

To the extent the Commission may, at some point, consider adding regulation beyond its current captioning requirements, the Commission needs to be very careful about changing existing captioning requirements without a careful and complete assessment of unintended and potentially adverse

³⁴ See *Captioning Order*, 13 FCC Rcd 3272 (¶¶ 222-25).

³⁵ Accuracy rates are premised on word error rate, which treats any misspelled, omitted or extra word as an error, and expresses overall accuracy as (Total Number of Words – Total Number of Errors)/Total Number of Words.

consequences of any such change on technological innovation, the availability of local programming, competition, and other concerns relevant to the public interest. For example, as a prelude to any new captioning requirements, the Commission is right to first evaluate how best to measure captioning accuracy pursuant to objective criteria that will obtain identical results when applied by stations and by regulators and that will measure the actual accessibility of programming, not insignificant or trivial errors. Second, the Commission should require a complete record as to the current levels of accurate captioning available in the marketplace. Third, the Commission must be cautious with prescriptive regulations without a full understanding of all ongoing technological efforts and developments. Fourth, the Commission should explain how any particular accuracy rate is appropriate given underlying congressional concerns that captioning requirements must be able to be implemented.³⁶ Without a record sufficient on these key points, the Commission cannot expect to be able to develop regulation that is both defensible and does not result in adverse or unintended outcomes.

³⁶ *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Video Programming Accessibility*, Notice of Proposed Rule Making, 12 FCC Rcd at 1087, 1090-1091 (¶¶ 104, 111) (recognizing that captions only must "provide information substantially equivalent to that of the audio portion of a video program in order to be useful"). In 1997, the Commission rejected proposals to establish accuracy rates, deeming the market sufficient to ensure the levels of accuracy necessary to make programming accessible. See *Closed Captioning Order*, 13 FCC Rcd 3272 (¶¶ 222-23). As the Commission noted in 1997, regardless of government mandates, video programming providers continue to "have a strong incentive to maintain . . . captions of comparable quality" in their programming. *Id.* The number of recent complaints to the Commission regarding captioning issues suggests that this conclusion remains accurate: in the most recent quarter, the Commission reports that there were only thirteen consumer complaints regarding any sort of accessibility issue (including video description, emergency access and closed captioning) and radio and television broadcasting. See Public Notice, Report on Informal Consumer Inquiries and Complaints, 3rd Quarter Calendar Year 2005, at 9 (released November 4, 2005).

CONCLUSION

For all the foregoing reasons, the Commission should preserve the existing captioning requirements, while encouraging and promoting solutions that will enable all stations to caption local and live programming without overwhelming operational or financial burdens.

Respectfully submitted,

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